IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 4099 of 2006
Date of decision : 12.9.2006.

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Parties Name

Lakha Singh

..... Appellant.

vs.

Ajit Singh and another

.....Respondents

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. H.S. Bhullar, Advocate
for the appellant.

Sh. Anil Chawla, Advocate
for respondent-caveators.

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S.N. Aggarwal, J.

Elections for the office of Sarpanch of Gram Panchayat of village Bidadpur, Tehsil Baba Bakala had taken place on 29.6.2003. Lakha Singh – appellant and Ajit Singh-respondent had contested against each other for this office. Lakha Singh had secured 367 votes while Ajit Singh-respondent had secured 356 votes. Accordingly, Lakha Singh was declared elected.

Ajit Singh-respondent filed an election petition against the election of Lakha Singh-appellant by making various allegations. The said petition was contested by the respondent. The learned Tribunal

framed issues. Recounting was ordered by the learned Election Tribunal by passing the impugned order dated 25.8.2006. The following is the operative part of the impugned order :-

> "In order to prove the case of petitioner, the petitioner has examined himself as PW-1, Darshan Singh, Surjit Singh and closed his evidence. On the other hand, the respondent examined Paramjit Singh DW-1 and Lakha Singh respondent no.1 himself appeared as DW2 in the witness box and thereafter the respondent closed his evidence. The witnesses of petitioner as well as defendant/respondent No.1 were crossed at length by both the counsels. I have heard both the counsels on behalf of petitioner as well as on behalf of respondent No.1 and have minutely and thoroughly gone through the evidence on record filed by both the parties. I have heard the learned counsels for both the parties and have gone through the pleadings of the parties and the evidence on record by the petitioner as well as respondent and after hearing the arguments and going through the record I am of the view that no prejudice will be caused to either party if recounting of the votes is allowed in the given circumstances, so the recounting of votes of village Bidadpur, Block Rayya, Tehsil Baba Bakala, District Amaritsar, for the post of Sarpanch of village Bidadpur on 1.9.2006 in the presence of both the parties. The concerned Presiding Officer Sh. Roop Singh, Computer

Branch, Irrigation Department, Amritsar is directed to remain present on dated 1.9.2006 for the purpose of assisting in recounting of the votes and the final result will be declared."

However, the recounting was postponed to 15.9.2006.

Hence, the present appeal.

The submission of the learned counsel for the appellant was that recounting is not a fun. It cannot be ordered without giving reasons. No doubt, the allegations were made by Ajit Singh-respondent in the election petition but these were controverted by the appellant by filing written reply. Issues were framed and parties have led the evidence. But no reasons have been given by the Election Tribunal for ordering recounting. The only reason given by the Election Tribunal, was that no prejudice will be caused to either party if recounting of votes is allowed in the given circumstances. This is no reason. The law has been settled by the Hon'ble Supreme Court that secrecy of the ballot is a sacrosanct principle which cannot be violated by ordering recounting of votes without any valid reasons.

It is further settled that merely because no prejudice will be caused to either of the parties cannot become the basis for passing the order of recounting. The Tribunal must narrate the circumstances which necessitate recounting. By recounting the secrecy of ballot is violated which is against the spirit of law.

Secondly, the order directing recounting must be a speaking order giving detailed reasons which justify recounting. It was held by the Hon'ble Full Bench of this Court in the judgment reported as

Radha Kishan vs. Election Tribunal-cum-Sub Judge, Hissar and another AIR 2000 Punjab and Haryana 1, as under :-

> "The essence of judicial pronouncements or judgments of the Court, is the reasons in support thereof. Reasons is the soul of the judgment. Reasons would be founded on material on record. The doctrine of reasonableness and application of mind are more stringently applicable to the judicial pronouncements than the administrative orders. The basic rule of law demands the Courts to pass orders based upon record and founded on some plausible reasoning. To satisfy this dual concept presentation of some material before the Court to bring a case within the purview and scope of sub sec. (4) (b) of the Act would be essential. The concept of automatic conversion of a petition into an order would be destructive of the basic rule of law."

It is not disputed that Election Tribunal is quasi judicial body and therefore, it has to follow the principle of natural justice and has to pass the orders most judiciously keeping in view the principle narrated above.

Since, this order directing recounting has been passed without reasons, therefore, this appeal is accepted and the impugned order dated 25.8.2006 is set aside.

However, the learned Election Tribunal shall be at liberty to order recounting by giving valid reasons if it reaches the conclusion that recounting is the only way to do justice to the parties. Since more

than three years have expired after the elections were held, therefore, the learned Tribunal shall decide the election petition expeditiously and positively within a period of six months from today.

(S.N.Aggarwal)
Judge

12.9.2006.
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